SUPREME COURT OF APPEALS OF VIRGINIA.

BROWN'S COMMITTEE *v.* WESTERN STATE HOSPITAL.

Nov. 18, 1909.

[66 S. E. 48.]

1. Appeal and Error (§ 714*)—Record on Appeal—Agreement between Parties.—The court on appeal must determine the case on the record considered by the court below, and any agreement between counsel must be ignored.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2961; Dec. Dig. § 714.*]

2. Insane Persons (§ 63*)—Support in Asylum—Compensation.—At common law, and in the absence of express contract, the state may not recover from the estate of a lunatic the expenses incurred in supporting him in the state hospital, but the right of action exists only by statute imposing a personal liability for such support.

[Ed. Note.—For other cases, see Insane Persons, Cent. Dig. § 106; Dec. Dig. § 63.*]

3. Insane Persons (§ 63*)—Support—Compensation.—Acts 1906, p. 189, c. 115, giving a right of action to enforce a claim for support of an inmate in a state insane hospital, merely provides a remedy against the estate of a lunatic committed to a state hospital, and is repealed by Acts 1908, p. 689, c. 401, amending and re-enacting the act of 1906, and providing that no citizen who shall be committed to an insane asylum shall be charged with any of the expenses attendant therewith and repealing all conflicting acts, and a claim for support, not reduced to judgment at the time of the adoption of the act of 1908, cannot be collected.

[Ed. Note.—For other cases, see Insane Persons, Dec. Dig. § 63.*]

4. Constitutional Law (§ 243*)—Equal Protection of the Laws—Classes.—Act 1908, p. 687, c. 401, dealing alike in regard to the support of all insane persons committed to a state hospital and putting them all in the same class, does not deny the equal protection of the law within the fourteenth amendment to the federal Constitution.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 702; Dec. Dig. § 243.*]

5. Exemptions (§ 4*)—Construction of Statute—Legislative Intent.—A statute exempting property from levy or sale will not be construed strictly, but will be construed to carry out the obvious intent of the Legislature.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 4; Dec. Dig. § 4.*]

6. Statutes (§ 263*)—Construction—Retroactive Statutes.—A stat-

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

ute will be construed as prospective unless the intention that it shall operate retrospectively is expressly declared.

[Ed. Note.—For other cases, see Statutes, Dec Dig. § 263.*]

7. Insane Persons (§ 63*)—Statutes.—The state through its Legislature has the unrestricted power to take away the remedy provided in its own behalf in Acts 1906, p. 189, c. 115, giving a right of action for the support of inmates in insane hospitals.

[Ed. Note.—For other cases, see Insane Persons, Dec. Dig. § 63.*]

8. Constitutional Law (§ 190*)—Statutes—Repeal—Effect.—The rights depending on a statute and still inchoate and not perfected by final judgment or reduced to possession, are lost by repeal of the statute.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 531-533; Dec. Dig. § 190.*]

9. Statutes (§ 161*)—Repeal—Effect.—Where a later statute is plainly intended to embrace the whole legislation on the subject to which it refers and to be wholly substituted for all former statutes on the same subject, the former statutes are repealed.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 230; Dec. Dig. § 161.*]

Appeal from Corporation Court of Staunton.

Suit by the Western State Hospital against J. Baldwin Brown's committee. From a decree granting relief, defendant appeals. Reversed and rendered.

Peyton Cochran and *H. J. Taylor,* for appellant.
Timberlake & Nelson, for appellee.

CARDWELL, J. Upon an appeal allowed to this court the case has to be considered and determined upon the record considered and passed upon by the court from whose decision the appeal is taken, and therefore an agreement between counsel for the respective parties that, in order to determine the rights of all parties interested in the fund in the cause, it shall be heard and determined in this appellate court as if certain parties, who were not parties in the court below, were parties to the record, has to be ignored. Nor will an agreement between counsel as to the effect of a former decree entered in the cause be considered.

J. Baldwin Brown was on March 15, 1892, committed as an insane patient to the Western Lunatic Asylum, now by statute known as the Western State Hospital, at Staunton, Va. At the time of his commitment Brown owned no property. He was therefore entered as a state patient, free of charge, and had remained and was treated as such until the institution of this suit.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

October 1, 1899, Mrs. Susan M. Baldwin, died, leaving a will in which she bequeathed a legacy of $2,864 to be held in trust for her afflicted nephew "until his health should be restored enough for him to have the care of same, the income from said fund to be applied to his clothes and comfort in every way."

In a pending cause the corporation court of the city of Staunton by its decree of January 15, 1900, construing the will of Mrs. Susan M. Baldwin, held as follows: "That the trustee of J. Baldwin Brown constituted by the said will of Susan M. Baldwin, deceased, take the remaining one-half of the estate passing under the said will, and that the said trustee hold this last-named estate in trust for the said J. Baldwin Brown while he shall continue insane, and apply the income derived from said estate to the maintenance and support of the said J. Baldwin Brown; that whenever the said J. Baldwin Brown shall become of sound mind that this trust shall end, and that he, the said J. Baldwin Brown, shall take absolutely, without any restriction or limitation whatsoever the corpus of the entire estate held for him as aforesaid."

With a view of subjecting the trust fund held for said Brown under the will of his aunt to the payment of the cost of his maintenance from the time of his commitment as an insane patient until the filing of said petition, amounting to $4,352.40, the Western State Hospital filed on the 15th day of October, 1907, its petition asking that the income of the aforesaid trust fund be applied to the debt due the hospital; and, if at the determination of the trust the debt should not have been satisfied, that the corpus of the fund should be subjected in payment of the balance due thereon.

Upon a reference to Master Commissioner Jos. A. Glasgow of said petition and the answer of Brown's committee thereto, the commissioner reported that under the act approved March 10, 1906 (Acts 1906, p. 189, c. 115), not only was the claim asserted by the hospital limited to five years next preceding the filing of its petition, making the debt due the hospital $1,164, but that under the further provisions of that act the debt claimed to be due the hospital could not be enforced at all.

The corporation court upon the hearing of the cause upon the master's report and two exceptions thereto sustained the report in so far as it found that the claim of the hospital was limited to the five years preceding the filing of its petition, but overruled the report as to an exemption of $2,000 to the estate of Brown, the lunatic, and as to the absolute exemption of the estate from payment of the claim of the hospital, because not sufficient for the support of an adult, and established the debt of $1,164 against the estate of Brown to be paid from the surplus income of the trust fund which remains after the payment of such necessary expenses

as clothes, trips, tobacco, etc., furnished Brown. It decreed, further, that, if the debt is not satisfied at the death of Brown, the principal of the trust fund shall be subjected to the residue thereof. From that decree the committee of Brown obtained this appeal.

In our view of the case the only question requiring consideration is: What was the effect of the act of the General Assembly approved March 16, 1908 (Acts 1908, p. 687, c. 401), upon the right of the state to enforce a claim for support and maintenance of an inmate in either of its hospitals established and maintained for the care and treatment of insane citizens of the state?

It seems not to be controverted that no such right existed at common law, in the absence of express contract, but that the right of action against the estate of a lunatic for past expenses incurred in supporting him in one of the state's hospitals can exist only by statute imposing a personal liability for such support. The act of 1906, *supra,* gave the state no vested right, but merely provided a remedy or right of action against the estate of a lunatic committed to one of the hospitals of the state in certain cases only. It provided expressly, as had not been theretofore, the various state hospitals with the means of collecting past due charges for the maintenance and support of such patients as may have estates, but made this qualification: "Except no claim shall be enforced or collected when the estate is worth less than two thousand dollars, nor where the estate is less than the amount necessary for the support of such insane person, or his or her immediate family, * * * and no statute of limitation shall run against any such claim or debt; provided, that no action or suit shall be brought or maintained for any part of any claim which has been due and payable for five years or more."

Here appeared the avowed policy and intent of the Legislature that the several state hospitals might collect past-due charges for the maintenance and support of patients in their respective hospitals in certain cases—first, where the estate of the lunatic exceeding $2,000, thus exempting that sum from liability in any event; and, second, where the estate was less than the amount necessary for the support of the insane person, or his or her immediate family, in either of which events no part of the estate was to be subjected to the claim of the hospital.

As observed, that statute only provided the means of collecting past due charges for the maintenance and support of a patient in any of the several hospitals, and gave a right of action therefor upon certain conditions and limitations; but a different policy is unmistakably declared by the action of 1908, to wit, that the estate or personal representative of a citizen of the state "committed to an insane asylum or hospital of the state" shall not be

charged with any of the expenses attendant upon his commitment, or for his maintenance in the hospital to which committed, thus putting all of that class of unfortunates in the state entirely upon the same footing.

The act of 1908 is as follows:

"1. Be it enacted by the General Assembly of Virginia, that an act entitled 'An act to provide for the expense of removing, supporting and maintaining insane persons—how paid,' approved March tenth, nineteen hundred and six, be amended and re-enacted to read as follows:

"Section 1. Be it enacted by the General Assembly of Virginia, that no citizen of the state of Virginia, who shall be committed to the insane asylum of the state, his estate or personal representative, shall be charged with any of the expenses attendant therewith, or for his maintenance therein.

"Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed."

The act declared in its title its purpose, viz., "to amend and reenact chapter 115, acts of assembly, 1906-7, entitled 'An act to provide for the expense of removing, supporting and maintaining insane persons—how paid,' approved March 10, 1906;" and it deals with the whole subject of providing for the expense of removing, supporting and maintaining insane persons, how paid, and amends the only existing statute upon the subject, viz., the act approved March 10, 1906, *supra*, and concludes with an unqualified repeal of all acts or parts of acts in conflict therewith.

Unless this statute be construed as declaring the purpose and intent of the Legislature to be that thereafter no claim should be collected for the maintenance and support of insane persons committed before or after the passage of the act to an insane asylum or hospital of the state, then we would have two classes of inmates in these several hospitals—the one required to pay for their support and maintenance under the act of 1906, and the other required to pay nothing, as provided by the act of 1908, a situation not lightly to be attributed to the Legislature.

It was plainly the intent of the Legislature in the act of 1908 to deal alike with all citizens of the state committed to either of the several hospitals established for their care and comfort, to put them all in the same class, and, where this is the case, there is no ground for the charge of "denial of equal protection," enjoined by the fourteenth amendment to the United States Constitution. Hayes *v.* Missouri, 120 U. S. 68, 7 Sup. Ct. 350, 30 L. Ed. 578.

The effect of the statute was, as intended, to exempt the entire estate of a lunatic from sale, levy, or charge for his support in an asylum or hospital for the insane citizens of the state, and not merely a part thereof.

"A statute exempting property from levy or sale is not to be construed strictly, but to carry out the obvious intent of the lawmaker." Washburn v. Goodheart, 88 Ill. 229, 13 L. R. A. 719; note 23 Am. & Eng. Ency. L. 399; and note 45 Am. Dec. 252.

It is very true that the words of the statute in question import future operation and effect, and it is also true that the rule is that statutes are always to be construed as prospective, and not retroactive, as not intending to interfere with existing contracts, rights of action, or vested rights, unless the intention that it shall so operate is expressly declared in the repealing act; but that rule has no bearing here. As remarked, the act of 1908 merely destroyed a remedy or right of action provided on behalf of the insane hospitals, which are institutions of the state, and there seems no room whatever to doubt that the state through its legislative branch of government had the right, the unrestricted power, to take away or discontinue the remedy or right of action provided in its own behalf in the act of 1906, and this was done by the act of 1908, fairly construed, and by the express repeal of all acts or parts of acts in conflict therewith; i. e., all acts or parts of acts theretofore enacted dealing with the subject legislated upon in the last act.

What would have been the status of the claim asserted in this case had it been carried into judgment against Brown, the lunatic, or his estate, before the passage of the act of 1908, is a question that need not be consi ered, as the act took effect before the entry of the decree here complained of.

"The rights depending on a statute and still inchoate, not perfected by final judgment or reduced to possession, are lost by repeal or expiration of the statute." Sutherland on Stat. Constr. § 163. See, also, Curran v. Ownes, 15 W. Va. 208, in which the opinion says: "We think it well settled that the general rule is that, when an act of the Legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed (Ex parte McCardle, 7 Wall. 514, 19 L. Ed. 264), and that a right of action that did not exist at common law, but depends solely upon statute, falls within the repeal of the statute, without a saving clause, unless that right has been carried into judgment. * * * That if pending such action before there is a judgment the law which gave the right to bring the suit is repealed, without a saving clause as to suits pending, no further steps towards judgment can be taken in such suit.

The act of 1908 is to amend and re-enact the act of 1906 so as "to read as follows;" and both in its title and in the enacting clause refers directly to the act of 1906, and makes it wholly the subject of the amendment. Not only was it manifest that the later act was intended to be a repeal of all parts and provisions of

the statute amended which were omitted from it, but it expressly so declared.

As said in the opinion by Riley, J., in Somers' Case, 97 Va. 759, 33 S. E. 381, a case in point here: "Where the later statute was plainly intended to embrace the whole legislation on the subject to which it refers, and to be wholly substituted for all former statutes on the same subject, it must be held to be a legislative declaration that whatever is embraced in it shall prevail and whatever is excluded is discharged and repealed." See, also, the authorities cited in that case, and Curran *v.* Ownes, *supra.*

We are of opinion that the decree appealed from in this case is erroneous, and it will be annulled, and this court will enter the decree that the corporation court of the city of Staunton should have entered, dismissing appellee's petition.

Reversed.

TERRELL *v.* CHESAPEAKE & O. RY. CO.

Nov. 18, 1909.

[66 S. E. 55.]

1. Railroads (§ 222*)—Nuisance—Roundhouse Yard—Private or Public Capacity.—Where a railroad company maintained cetain tracks in its roundhouse yard on which it stored, blew out, cleaned, and fired engines, while not in use and in the open air, which constituted a nuisance to adjoining property, the railroad's acts were committed in its private and not in its public capacity; and hence it was liable to such adjoining property owners for the damage sustained without reference to whether its conduct was negligent or not.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 721; Dec. Dig. § 222.*]

2. Corporations (§ 382*)—Public Service Corporation—Duties of Nonpublic Nature.—A public service corporation in the performance of duties not of a public nature, though incidental to those of a public character, stands on the same footing as a private corporation.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1517; Dec. Dig. § 382.*]

3. Railroads (§ 222*)—Roundhouse—Terminal Yards—Nuisance.—That a railroad company has legislative authority for the construction of workshops and yards within specified limits does not justify it as against a particular householder in so constructing its plant as to constitute a nuisance.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 721; Dec. Dig. § 222.*]

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